



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SATS No. MO-041-FOR; Docket ID: OSM-2013-0008; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Missouri proposed revisions to its regulations concerning several topics regarding: Valid Existing Rights; Protection of Hydrologic Balance; Post-mining Land Use; Permit Applications; and Air Resource Protection. Missouri intends to revise its program to be no less effective than the Federal regulations, to clarify ambiguities, and to improve operational efficiency.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Len Meier, Director Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, IL 62002, Telephone: (618) 463-6460, E-mail: lmeier@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, Federal Register (45 FR 77017). You can find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of the Amendment

By letter dated August 12, 2013 (Administrative Record No. MO-678), Missouri sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.). Missouri sent the amendment in response to a January 31, 2008, letter (Administrative Record No. MO-669) we sent to Missouri in accordance with 30 CFR 732.17(c) concerning changes to valid existing rights requirements. Missouri also made changes to eliminate required program amendments recorded at 30 CFR 925.16(p)(4), (p)(20) and (v); and program disapprovals at 30 CFR 925.12(d). Missouri revised other sections of its regulations at its own initiative. Missouri proposed revisions to title 10 of its Code of State Regulations (CSR) under Division 40 Land Reclamation Commission. The specific sections of 10 CSR 40 in Missouri's amendment are discussed in **Part III OSMRE's Findings**.

Missouri intends to revise its program to be no less effective than the Federal regulations, to clarify ambiguities, and improve operational efficiency.

We announced receipt of the proposed amendment in the October 25, 2013, Federal Register (78 FR 63909). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended November 24, 2013. We did not receive any public comments.

III. OSMRE's Findings

We are approving the amendment as described below. The following are the findings we made concerning Missouri's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

1. Missouri proposed to revise the sections listed below to make numerous non-substantive edits for clarity and update its rules to current editions of the Missouri Statutes:

Minor Reference Change Table	
10 CSR	Title
40-3.040	Requirements for Protection of the Hydrologic Balance
40-3.060	Requirements for the Disposal of Excess Spoil
40-3.170	Signs and Markers for Underground Operations
40-3.180	Casing and Sealing of Exposed Underground Openings
40-3.200	Requirements for the Protection of the Hydrologic Balance for Underground Operations
40-3.210	Requirements for the Use of Explosives for Underground Operations
40-3.220	Disposal of Underground Development Waste and Excess Spoil
40-3.230	Requirements for the Disposal of Coal Processing Waste for Underground Operations
40-3.240	Air Resource Protection
40-3.260	Requirements for Backfilling and Grading for Underground Operations
40-3.300	Postmining Land Use Requirements for Underground Operations
40-5.010	Prohibitions and Limitations on Mining in Certain Areas
40-5.020	State Designation of Areas as Unsuitable for Mining
40-6.020	General Requirement for Coal Exploration, Permits

40-6.030	Surface Mining Permit Applications – Minimum Requirements for Legal, Financial, Compliance, and Related Information
40-6.040	Surface Mining Permit Applications – Minimum Requirements for Information on Environmental Resources
40-6.050	Surface Mining Permit Applications – Minimum Requirements for Reclamation and Operations Plan
40-6.060	Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations
40-6.070	Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions
40-6.100	Underground Mining Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information
40-6.110	Underground Mining Permit Applications – Minimum Requirements for Information on Environmental Resources
40-6.120	Underground Mining Permit Applications – Minimum Requirements for Reclamation and Operations Plan
40-7.050	Requirements, Conditions and Terms of Liability Insurance
40-8.010	Definitions
40-8.020	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction
40-8.070	Applicability and General Requirements

We find that Missouri’s proposed revisions will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri’s revisions.

2. 10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance
(6)(A)1., (6)(R), and (6)(U) Siltation Structures and 10 CSR 40-3.200
Underground Mining (6)(A)1., (6)(R), and (6)(U) Siltation Structures

Missouri proposed to replace the word “pond” with “structure” at 10 CSR 40-3.040 (6)(A)1., (6)(R), and (6)(U) Siltation Structures and at 10 CSR 40-3.200 (6)(A)1., (6)(R), and (6)(U) Siltation Structures. The corresponding Federal Regulations at 30 CFR 816.46 and 817.46 uses the same term. We find that Missouri’s proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri’s revision.

3. 10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance (10)(B)5. and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (6)(T) and (10)(B)5. Permanent and Temporary Impoundments

Missouri proposed to revise these sections to clarify that requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States Soil Conservation Service Technical Release No. 60, *Earth Dams and Reservoirs*, July 2005, incorporated by reference. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, January 2004, by reference. The corresponding Federal Regulation at 30 CFR 780.25(a)(2)(i) provides similar requirements. We find that Missouri’s

proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

4. 10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance (10)(O)3.C. and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (10)(O)3.C. Permanent and Temporary Impoundments and Spillways

Missouri removes these design requirements in response to the disapproval recorded at 30 CFR 925.12(d) in order to be no less effective than the counterpart Federal regulations for surface mining at 30 CFR 780.25(c) and for underground mining at 30 CFR 784.16(c). Therefore, we are approving Missouri's revision and removing the disapproval at 30 CFR 925.12(d).

5. 10 CSR 40-3.060 Requirements for the Disposal of Excess Spoil (1)(K)2. Fill Inspection and 10 CSR 40-3.220 Disposal of Underground Development Waste and Excess Spoil (1)(L) Certified Report

Missouri proposed to revise these sections to require a registered professional engineer or other qualified professional specialist under the direction of a registered professional engineer to provide the director with a certified report stating that the fill has been constructed as specified in the design approved in the

permit and plan. The corresponding Federal Regulation at 30 CFR 816.71(i)(2) contains a similar requirement. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

6. 10 CSR 40-3.180 Casing and Sealing of Exposed Underground Openings (3)
Permanent Casing and Sealing of Underground Openings

Missouri proposed to revise this section to correct various regulatory citations and to include a reference to the Wellhead Protection Section, Division of Geology and Land Survey at 10 CSR 23 Chapter 6 for approval of water well transfers. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations.

However, OSMRE received a letter from the Mining Safety and Health Administration (MSHA) on October 25, 2013 (Missouri Administrative Record No. 678.09), which noted that the MSHA citation referenced (30 CFR 75.1771) was incorrect. The correct MSHA regulation is 30 CFR 75.1711. We are approving the amendment with the condition that Missouri correct this typographical error through their State administrative process.

7. 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (12)(A)1.(A) Groundwater Monitoring

Missouri proposed to revise this section to correct the references for remedial measures taken by the operator when analysis of any groundwater sample indicates noncompliance with the permit conditions to 10 CSR 40-6.070(14) and 10 CSR 40-6.120(5). The corresponding Federal Regulation at 30 CFR 816.41 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

8. 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (17)(B) Stream Buffer Zones

Missouri proposed to revise this section to correct the references for the marking of stream buffer zones that are not to be disturbed to meet the regulatory requirements at 10 CSR 40-3.170(6). The corresponding Federal Regulation at 30 CFR 817.11 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

9. 10 CSR 40-3.220 Disposal of Underground Development Waste and Excess Spoil
(1)(K) and (L) General Requirements

Missouri proposed to revise these sections to clarify at (K) that fill be inspected by or under the direction of a professional engineer and at (L) only the registered engineer shall provide the certified report by removing the "...or other qualified professional specialist..." verbiage from their rule. The corresponding Federal Regulation at 30 CFR 817.71(h)(2) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

10. 10 CSR 40-3.230 Requirements for the Disposal of Coal Processing Waste for
Underground Operations (1)(A) General Requirements

Missouri proposed to revise this section to state that all coal processing waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed for final placement in new or existing disposal areas approved in the permit and plan for this purpose. The corresponding Federal Regulation at 30 CFR 817.81(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

11. 10 CSR 40-3.230 Requirements for the Disposal of Coal Processing Waste for Underground Operations (3)(D) Water Control Measures

Missouri proposed to revise this section to correct the references to regulatory requirements that discharges of all water from a coal processing waste bank shall comply with 10 CSR 40-3.200(15). The corresponding Federal Regulation at 30 CFR 817.41(h) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

12. 10 CSR 40-3.240 Air Resource Protection (1)

On May 8, 1984, OSMRE notified Missouri in the Federal Register (49 FR 19476 as amended at 64 FR 57981) and recorded at 30 CFR 925.16(p)(4) that this requirement must be revised to provide performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 817.95(a). Missouri proposed to revise this section to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40-3.200(5)(A). The corresponding Federal Regulation at 30 CFR 817.95(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving

Missouri's revision and removing the required program amendment at 30 CFR 925.16(p)(4).

13. 10 CSR 40-3.260 Requirements for Backfilling and Grading for Underground Operations (4) Regrading or Stabilizing Rills and Gullies

Missouri proposed to revise this section to replace the existing requirements with more specific guidelines, including time frames, for regrading or stabilizing rills and gullies. Missouri proposed to add a section on regrading or stabilizing rills and gullies on areas that have been previously mined. The corresponding Federal Regulation at 30 CFR 816.95(b) provides similar, but less specific requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

14. 10 CSR 40-3.300 Postmining Land Use Requirements for Underground Operations.

Missouri proposed to revise subsection (3) of this section to correct the references to regulatory requirements at this section to require that prior to the release of lands from the permit area in accordance with 10 CSR 40-7.021(2)(C), the permit area shall be restored, in a timely manner, either to conditions capable of

supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Although there is no Federal Equivalent under the requirements for postmining land use, the corresponding Federal regulation for bond release at 30 CFR 800.40(c) provides similar requirements to the Missouri citation. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

15. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (1)(A)
Definition of Valid Existing Rights

Missouri proposed to revise this section to replace the definition of Valid Existing Rights with language that is consistent with the corresponding Federal regulation at 30 CFR 761.5. We find that Missouri's proposed revision will make its regulations substantively the same as the Federal regulations. Therefore, we are approving Missouri's revision.

16. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (2)
Areas Where Mining is Prohibited or Limited

Missouri proposed to revise this section to require that surface coal mining operations may not be conducted on the following lands, unless the permit

applicant either has valid existing rights as determined under section (7) or qualifies for the exception for existing operations under section (3). Missouri also revises this section at 10 CSR 40-5.010 (2)(E)2. to state that concerning the prohibition within 300 feet measured horizontally from an occupied dwelling, the prohibition does not apply when the part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

The corresponding Federal regulation at 30 CFR 761.11 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

17. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (3)
Exception for Existing Operations

Missouri proposed to revise this section to require that the prohibitions and limitations of section (2) do not apply to surface coal mining operations for which a valid permit, issued under 10 CSR 40-6, exists when the land within the permit area comes under the protection of section 444.890.4, Revised Statute of Missouri (RSMo), or this rule. The corresponding Federal regulation at 30 CFR 761.12 provides similar requirements. We find that Missouri's proposed revision will

make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

18. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas
(4) Procedures for Compatibility Findings for Surface Coal Mining Operations on
Federal Lands in National Forests

Missouri proposed to revise this section at (4)(A) to correct references to the Federal regulations at 30 CFR 761.13 concerning Federal lands in a national forest. Missouri added language at (4)(B) that the applicant may submit a request to the regional director of OSMRE for a determination before preparing and submitting an application for a permit or boundary revision. Additionally, the applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in subsection (1)(B) and must include a map and sufficient information about the nature of the proposed operation for the Secretary of the Interior to make adequately documented findings. Missouri proposed to revise section (4)(C) to require that when a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the commission or director may not issue the permit or approve the

boundary revision before the Secretary of the Interior makes the findings required by subsection (2)(B).

The corresponding Federal regulation at 30 CFR 761.13, provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

19. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (5)
Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on
Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Missouri proposed to revise this section at (5)(A) to emphasize that the requirements of this section do not apply to lands for which a person has valid existing rights, that are within the scope of existing operations as defined in Section (3), or roads that join an existing public road.

Missouri proposed to revise the section at (5)(B)(3) to provide a public comment period if a mining operation may affect a right-of-way or public road.

The corresponding Federal regulation at 30 CFR 761.14 provides similar requirements. We find that Missouri's proposed revision will make its regulations

no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

20. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (6)
Procedures for Waiving the Prohibition on Surface Coal Mining Operations
within the Buffer Zone of an Occupied Dwelling

Missouri proposed to revise this section to identify three situations where this section does not apply, and to require waivers to clarify who has a legal right to deny mining and knowingly waived that right. The waiver will act as consent for the mining. Missouri adds language similar to the requirements in the corresponding Federal regulation at 30 CFR 761.15. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

21. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (7)
Submission and Processing of Requests for Valid Existing Rights Determinations

Missouri proposed to revise this section to require that an applicant must request a valid existing rights determination from OSMRE for Federal lands and for those features on Federal lands protected under subsections (2)(C) through (G). An applicant must request a valid existing rights determination for non-Federal lands

and for those features on non-Federal lands protected under subsections (2)(C) through (G) from the regulatory authority. The regulatory authority must use the Federal definition of valid existing rights at 30 CFR 761.5 when making a determination for non-Federal lands and the definition of valid existing rights at subsection (1)(A) when making a determination for those features protected under subsections (2)(C) through (G).

At (7)(B), Missouri requires that an applicant must request a valid existing rights determination from the appropriate agency under subsection (7)(A) if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under section (2) or wishes to confirm the right to do so. The applicant may submit this request before preparing and submitting an application for a permit or boundary revision for the land. If OSMRE is the appropriate agency, the applicant must request the determination in accordance with the requirements of the Federal regulations at 30 CFR 761.16. If the regulatory authority is the appropriate agency, the applicant must request the determination in accordance with the requirements of 10 CSR 40-5.010.

The corresponding Federal regulation at 30 CFR 761.16, provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

22. 10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas (8)
Regulatory Authority Obligations at Time of Permit Application Review

Missouri proposed to revise this section at (8)(A) to require that the commission or director review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under section 444.890.4, RSMo., or Missouri regulations.

At (8)(B), Missouri requires that the commission or director reject any portion of the application that would locate surface coal mining operations on land protected under section 444.890.4, RSMo., or Missouri regulation, unless: the site qualifies for the exception for existing operations under section (3); a person has valid existing rights; the applicant obtains a waiver or exception from the prohibitions of section 444.890.4, RSMo., or Missouri regulation; and for lands protected by subsection (2)(C), both the commission or director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (8)(D).

At (8)(C), Missouri added language to this section that if the commission or director has difficulty determining whether an application includes land within an

area specified in subsection (2)(A), the commission or director shall request that the Federal, state, or local governmental agency verify the location.

At (8)(D), if the commission or director determines that the proposed surface coal mining operation will adversely affect any publicly-owned park or any place included in the National Register of Historic Places, the director shall request that the Federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The regulations contain requirements on how this request will be submitted and processed.

The corresponding Federal regulation at 30 CFR 761.17 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

23. 10 CSR 40-5.020 State Designation of Areas as Unsuitable for Mining (3) Applicability to Lands Designated as Unsuitable by Congress; and (4) Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations

Missouri proposed new language at section (3) Applicability to Lands Designated as Unsuitable by Congress; pursuant to appropriate petitions, lands listed under 10 CSR 40-5.010(2) are subject to designation as unsuitable for all or certain types of

surface coal mining operations under this rule. Missouri's proposed new language is consistent with the corresponding Federal regulation at 30 CFR 762.14. Therefore, we find that Missouri's new language is no less effective than the Federal regulation. Therefore, we are approving Missouri's new language.

Additionally, Missouri proposed to revise section (4) by adding a new title: Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations and added the word "unsuitable" in this section. Missouri's proposed revisions are consistent with corresponding Federal regulation at 30 CFR 762.15. We find that Missouri's revisions are no less effective than the corresponding the Federal regulation. Therefore, we are approving Missouri's revisions.

24. 10 CSR 40-6.020 General Requirements for Coal Exploration Permits (3)(B)14. Permit requirements for explorations removing more than two hundred fifty tons of coal or where explorations will substantially disturb the natural land surface.

Missouri proposed to revise this section to require that for any lands listed in 10 CSR 40-5.010(2), a demonstration that the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The corresponding Federal regulation at 30 CFR 772.12(b)(14) provides similar requirements. We find that Missouri's proposed revision will make its regulations

no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

25. 10 CSR 40-6.020 General Requirements for Coal Exploration Permits (3)(D) Decisions on Applications for Exploration Removing More than Two Hundred Fifty Tons of Coal

Missouri proposed to add paragraph 2.D. to this section requiring minimal interference, to the extent possible, with the values for which those lands were designated as unsuitable for surface coal mining with exploration activities. This section also requires reasonable opportunity for comment by the owner or agency with primary jurisdiction over the feature causing the land to come under the protection of 10 CSR 40-5.010(2) on whether the finding by the commission under (3)(D)1 and 2 is appropriate.

The corresponding Federal regulation at 30 CFR 772.12(d)(2)(iv), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

26. 10 CSR 40-6.030 Surface Mining Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information (4)(C) Relationship to Areas Designated Unsuitable for Mining

Missouri proposed to revise this subsection to require that if an applicant proposed to conduct surface mining activities within one hundred feet (100') of the outside right-of-way of a public road or within three hundred feet (300') of an occupied dwelling, the application shall meet the requirements of 10 CSR 40-5.010(5) or (6), respectively. The corresponding Federal regulation at 30 CFR 778.16(c), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

27. 10 CSR 40-6.050 Surface Mining Permit Applications - Minimum Requirements for Reclamation and Operations Plan (14)(B) Protection of Public Parks and Historic Places

Missouri proposed to revise this section to correct the references to regulatory requirements to make it similar to the provisions of the corresponding Federal regulation at 30 CFR 780.31(a). We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

28. 10 CSR 40-6.050 Surface Mining Permit Applications - Minimum Requirements for Reclamation and Operations Plan (15) Relocation or Use of Public Roads

Missouri proposed to revise this section to correct the references to regulatory requirements to make it similar to the provisions of the corresponding Federal regulation at 30 CFR 780.33. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

29. 10 CSR 40-6.060 Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations

Missouri proposed to revise this section to correct the address of the Land Reclamation Program at (4)(C)1.A. and references to regulatory requirements to make it similar to the provisions of the corresponding Federal regulation at 30 CFR 785.17(e)(2). We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

30. 10 CSR 40-6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions (2)(A)5. Public Notices of Filing of Permit Applications

Missouri proposed to revise this subsection to require that if an applicant seeks a permit to mine within one hundred feet (100') of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the mine-related activities must be submitted. The corresponding Federal regulation at 30 CFR 773.6(a)(1)(v) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

Additionally, Missouri proposed to revise this section to add "mine-related activities" to the concise statement requirement if an applicant seeks a permit under this section of the rule. The corresponding Federal regulation at 30 CFR 773.15(c)(2), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

31. 10 CSR 40-6.100 Underground Mining Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information (1)(C) and (D) Identification of Interests

Missouri proposed to revise this section to clarify that required information concerning an applicant's ownership or control as defined in 10 CSR 40-6.010(2)(C) must be contained in each application. The corresponding Federal regulations at 30 CFR 778.11 and 778.12 provide similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

32. 10 CSR 40-6.120 Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operations Plan (5)(C) Reclamation Plan - Protection of Hydrologic Balance.

Missouri proposed to revise subparagraph (C) to clarify that the supplemental information required by this section shall include the plans listed at (C)1. through (C)3. The corresponding Federal regulation at 30 CFR 784.14(g), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

33. 10 CSR 40-6.120 Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operations Plan (7)(A)1.A. Reclamation Plan-Ponds, Impoundments, Banks, Dams, and Embankments.

Missouri proposed to revise this section to clarify that the general plan shall be prepared by or under the direction of and certified by only a qualified registered professional engineer by removing the "...or by a professional geologist..." verbiage from their rule. The corresponding Federal regulation at 30 CFR 784.16(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

34. 10 CSR 40-6.120 Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operations Plan (9)(A) Relocation or Use of Public Roads.

Missouri proposed to revise this section to change from "underground mining activities" to "surface coal mining operations." The corresponding Federal regulation at 30 CFR 784.18(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

35. 10 CSR 40-8.010 Definitions

Missouri proposed to revise the definition of several terms to provide similar definitions to the corresponding Federal regulation at 30 CFR 701.5, including adding a definition for "Replacement of water supply." We find that Missouri's

proposed revisions will make its regulations substantively the same as the corresponding Federal regulations.

However, we noted in the definition at 89 *Significant, imminent environmental harm to land, air or water resources*, the reference needs to be changed from 444.855.2, RSMo to the valid reference 444.885.2, RSMo. Missouri needs to correct this citation in a future program amendment. We are approving the amendment with the condition that Missouri prepare a required program amendment at 30 CFR 925.16 to correct the regulation citation.

36. 10 CSR 40-8.020 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction (2)(C) Definitions

Missouri proposed to revise this definition to be substantively the same as the corresponding Federal regulation at 30 CFR 707.5. Therefore, we are approving Missouri's revision.

37. 10 CSR 40-8.070 Applicability and General Requirements (2)(C)1.A.(II)

Missouri proposed to correct the reporting dates at (a) and (b) of this subparagraph. These dates were corrected to clearly require separate cumulative coal production and revenue data from mining prior to October 1, 1992, and after

October 1, 1992. This action corrects the disapproval of the Missouri regulations recorded at 30 CFR 925.12(f). The corresponding Federal regulation at 30 CFR 702.5(a)(2) provides a similar requirement. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision and removing the disapproval at 30 CFR 925.12(f) and the required program amendment at 30 CFR 925.16(p)(20).

38. 10 CSR 40-8.070 Applicability and General Requirements (2)(C)8.B.

Missouri removes this subparagraph as redundant to the previously approved subparagraph at (2)(C)8.A. Since this action merely removes redundant language from a previously approved requirement, we find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On August 23, 2013, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record Nos. MO-678.03 through MO-678.08). We received one comment from MSHA (Administrative Record No. MO-678.09). MSHA pointed out that at 10 CSR 40-3.180(3), Missouri had incorrectly cited the MSHA regulation as 30 CFR 75.1771, when the correct MSHA regulation is 30 CFR 75.1711. Missouri was notified of this typographical error and will make this correction through its State administrative process.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 23, 2013, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MO-678.04). The EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 23, 2013, we requested comments on Missouri's amendment (Administrative Record No. MO-678.06 and MO-678.07), but neither the SHPO nor ACHP responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Missouri sent us on August 12, 2013.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program to include the original amendment submission date and the date of final publication for this rulemaking.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. Because each program is drafted and promulgated by a specific State, not by OSMRE, these standards are not applicable to the actual language of State regulatory programs and program amendments. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes. We have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination was reached because the Missouri program does not regulate coal exploration and surface coal mining or reclamation operations on Indian lands. Therefore, the Missouri program has no effect on federally recognized Indian tribes.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is, (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution or use of energy. A Statement of Energy Effects is not required because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution or use of energy.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) states that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is founded upon the State submittal, which is the subject of this rule. The State submittal is based upon counterpart Federal

regulations, for which an analysis was prepared, and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations, for which an analysis was prepared, and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 2015.

Len Meier, Acting Regional Director,

Mid-Continent Region.

Editorial Note: This document was received for publication by the Office of the
Federal Register on December 11, 2015.

For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925 -- MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 925.15 is amended in the table by adding an entry in chronological order by "Date of final publication" to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * August 12, 2013	* * <u>[Insert date of publication in the Federal Register]</u>	10 CSR 40-3.040(6)(A)1., (6)(R), (6)(U), (10)(B)5., and (10)(O)3.C.; 10 CSR 40-3.060(1)(K)2.; 10 CSR 40-3.180(3); 10 CSR 40-3.200(6)(A)1., (6)(R), (6)(U), (6)(T), (10)(B)5., (10)(O)3.C., (12)(A)1.(A), and (17)(B); 10 CSR 40-3.220(1)(K) and (L); 10 CSR 40-3.230(1)(A) and (3)(D); 10 CSR 40-3.240(1); 10 CSR 40-3.260(4); 10 CSR 40-3.300; 10 CSR 40-5.010(1)(A), (2), (3), (4), (5), (6), (7),

		and (8); 10 CSR 40-5.020(3) and (4); 10 CSR 40-6.020(3)(B)14., and (3)(D); 10 CSR 40-6.030(4)(C); 10 CSR 40-6.050(14)(B) and (15); 10 CSR 40-6.060; 10 CSR 40-6.070(2)(A)5.; 10 CSR 40-6.100(1)(C) and (D); 10 CSR 40-6.120(5)(C), (7)(A)1.A., and (9)(A); 10 CSR 40-8.010; 10 CSR 40-8.020(2)(C); 10 CSR 40-8.070(2)(C)1.A.(II) and (2)(C)8.B.
--	--	---

§925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (p)(4) and (20) and removing paragraph (v).

[FR Doc. 2015-31674 Filed: 12/16/2015 8:45 am; Publication Date: 12/17/2015]